

IN THE MATTER OF
THUNDER HILL, LLC
Petitioner

* BEFORE THE HOWARD COUNTY
* BOARD OF APPEALS
* BA Case No. BA 661-D

DECISION AND ORDER

This case is an appeal by Froydis Beckerman, residing at 5480 Hound Hill Court, Columbia, Maryland 21045, from a decision of the Hearing Examiner who granted the petition of Petitioner in this case. A hearing was held before the Board of Appeals on August 27, 2009.

Petitioner, Thunder Hill, LLC, proposed an amendment (FDP-43-A-III) to the previously approved and recorded Final Development Plan, FDP-43-A-II, to eliminate the access/egress restrictions from the Site Design Criteria and removing the "Vehicular Ingress and Egress Restriction" line along Thunder Hill Road. Petitioner plans to construct a Walgreen's store on a site bordered by the southwest corner of Route 175 and Thunder Hill Road.

The Howard County Planning Board issued a decision letter on April 2, 2009, denying Petitioner's proposed amendment based in part on traffic safety issues and the apparent understanding that the State Highway Administration ("SHA") was opposed to the access amendment. The Hearing Examiner, on June 15, 2009, reversed that decision holding that "the evidence before me convinces me [that] the state agency had changed its position prior to the Planning Board proceeding and approved the restrictions' elimination once the deceleration lane replaced the right turn-in on the [Petitioner's] plan(s), which occurred in late August 2008."

During the Board hearing, the Board *sua sponte* raised the issue of its jurisdiction respecting Appellant Beckerman's standing to bring this appeal, since her residence appeared to be far removed from the site that is the subject of the amendment to the pertinent Final Development Plan.

Underlying the issue of standing of a person to proceed with an appeal to the Board, Howard County Code §16.900 (j)(2)(iii) provides, *inter alia*, that a decision of the Planning Board may be appealed as follows:

Any person *specially aggrieved* by any decision of the Planning Board and a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the board of appeals in accordance with Section 501 of the Howard County Charter. [Emphasis added.]

An aggrieved person is "one whose personal or property rights are adversely affected by the decision of the Board" and that "he is personally and specially affected in a way different from that suffered by the public generally." *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 144, 230 A. 2d 289 (1967). An adjoining, confronting or nearby owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved. In contrast, a person whose property is far removed from the subject property will not be considered a person aggrieved, except: if he "meets the burden of alleging and proving by competent evidence that his personal or property rights are specially and adversely affected by the board's action." *Id.* at 145

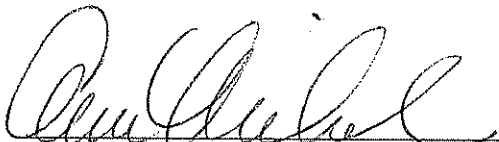
Appellant Beckerman, who resides at 5480 Hound Hill Court, Columbia, Maryland 21045 is not an adjoining, confronting or nearby property owner to Petitioner's site and therefore cannot be deemed to be specially damaged and aggrieved. Ms. Beckerman's residence is distant from the Petitioner's site – across MD Route 175, an Intermediate

Arterial Highway, located at the terminus of Hound Hill Court, the second court east of the intersection of MD Route 175 and Thunder Hill Road. Although afforded the opportunity to do so, Ms. Beckerman had not met her burden of proving by competent evidence that her personal or property rights are specially and adversely affected by the action of the Hearing Examiner.

Wherefore, it is, **ORDERED**, this 10th day of September, 2009,

1. That Froydis Beckerman does not have standing to pursue this appeal and that the Board is without jurisdiction to proceed with the appeal.
2. That this appeal is hereby dismissed.
3. That Froydis Beckerman shall be refunded her appeal filing fee of \$250.

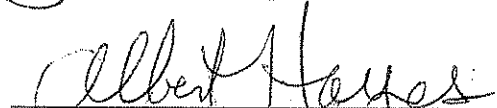
ATTEST:


Ann Nicholson, Secretary


HOWARD COUNTY
BOARD OF APPEALS



James Walsh, Chairperson

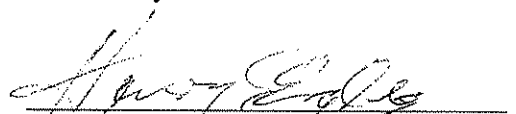
PREPARED BY:
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